

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Domestic Security Committee

BILL: SPB 7018

SPONSOR: For consideration by Domestic Security Committee

SUBJECT: Open Government Sunset Review/Emergency Management Plans/Hospitals

DATE: November 1, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pardue	Skelton		Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This proposed committee bill reenacts the public records and the public meetings exemption provisions for portions of hospitals' comprehensive emergency management plans. The exemption applies to those portions of a comprehensive emergency management plan which address the response of a public or private hospital to an act of terrorism as defined by s. 775.30, F.S., and which are filed with or are in the possession of the Agency for Health Care Administration, a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor, the Department of Health, or the Department of Community Affairs. The bill deletes the provisions that repeal the exemption.

This bill reenacts and amends s. 395.1056(1), (2), and (3), F.S.

II. Present Situation:

Public Records

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The Florida Legislature enacted the first law affording access to public records in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. Section 286.011, F.S., the Public Meetings Law, specifies the requirements for meetings of public bodies to be open to the public. While the State Constitution provides that records and meetings are to be open to the public, it also provides that

the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, of the Florida Constitution, governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the Florida Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The Open Government Sunset Review Act (s. 119.15, F.S.), provides for the repeal and prior review of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption. The law was amended by ch. 2005-251, Laws of Florida, to modify the criteria under the Open Government Sunset Review Act so that consideration will be given to reducing the number of exemptions by creating a uniform exemption during the review of an exemption subject to sunset.

Under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Section 119.15(6)(a), F.S., requires, as part of the review process, the consideration of the following questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Further, the exemption must be no broader than is necessary to meet the public purpose it serves. In addition, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

Under s. 119.15(8), F.S., notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under the section. The failure of the Legislature to comply strictly with the section does not invalidate an otherwise valid reenactment. Further, one session of the Legislature may not bind a future Legislature. As a result, a new session of the Legislature could maintain an exemption that does not meet the standards set forth in the Open Government Sunset Review Act of 1995.

2001 Legislative Findings

In creating s. 395.1056, F.S., the Legislature found the public necessity to exempt plan components of a hospital's response to terrorism because those portions of a comprehensive emergency management plan which address the response of a public or private hospital to an act of terrorism are vital plan components that affect the health and safety of the public.¹ The finding further stated that if security systems or plans, vulnerability analyses, emergency evacuation transportation, sheltering arrangements, post-disaster activities (including provisions for emergency power), communications, food, and water, post-disaster transportation, supplies (including caches), staffing, emergency equipment, individual identification of residents, transfer of records, and methods of responding to family inquiries were made publicly available for inspection or copying, they could be used to hamper or disable the response of a hospital to a terrorist attack. If a hospital's response to an act of terrorism were hampered or disabled, an increase in the number of Floridians subjected to fatal injury would occur.

While some skill would be required to use knowledge of plan components to disable a hospital's response to an act of terrorism, there is ample existing evidence of the capabilities of terrorists to plot, plan, and coordinate complicated acts of terror.

2005 Open Government Sunset Reviews

The Senate Domestic Security Committee, in its review of Senate Interim Project Report 2006-213, accepted the recommendation that the exemptions provided for portions of hospital comprehensive emergency management plans continue to be sufficiently compelling to override the strong public policy of open government.

International terrorists continue to demonstrate the ability to plan and carry out sophisticated acts of terrorism. Their capability appears to be no less today than at the time of the Legislature's original findings in 2001.

¹ Chapter 2001-362, L.O.F.

III. Effect of Proposed Changes:

This bill reenacts the public records and public meetings exemption provided for portions of hospitals' comprehensive emergency management plans. Section 395.1056, F.S., exempts from public disclosure, those portions of a comprehensive emergency management plan which address the response of a public or private hospital to an act of terrorism as defined by s. 775.30, F.S., and which are filed with or are in the possession of the Agency for Health Care Administration, a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor, the Department of Health, or the Department of Community Affairs. The section also gives a public access exemption to those portions of a comprehensive emergency management plan related to terrorism response that are in the custody of a public hospital.

The public access exemption extends to portions of a hospital's comprehensive emergency management plan including those portions addressing security systems or plans; vulnerability analyses; emergency evacuation transportation; sheltering arrangements; post-disaster activities including provisions for emergency power, communications, food and water; post-disaster transportation; supplies, including drug caches; staffing; emergency equipment; and individual identification of residents, transfer of records, and methods of responding to family inquiries.

Any portion of a public meeting which would reveal information contained in a comprehensive emergency management plan which addresses the response of a hospital to an act of terrorism is also exempted.

This SPB reenacts s. 395.1056(1), (2), and (3) and amends the section by deleting the provision that repeals the exemption.

This SPB provides for an effective date of October 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24 of the State Constitution, permits the Legislature to provide by general law for the exemption of open meetings and for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law.² This requirement was met by Chapter 2001-362, L.O.F.

² See, *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999)

Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.³ This SPB is in compliance with the provision.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

³ Art. I, s.24(c) of the State Constitution

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
